July 31, 2012

BETHEL SCHOOL DISTRICT

Together we will reach, teach and inspire each student to excellence

Scott Van Den Elzen, Board Member
HomeSource Family Charter
1110 Fairfield Avenue, Suite 100
Eugene, OR 97402

RE: PERS Payback and Fiscal Sustainability Plan Rejection

Scott,

As you are aware HomeSource Family Charter received a Directive Memorandum and Notice of Intent to Terminate dated June 29, 2012 from Bethel School District. That memorandum stated that HFC may avoid termination on August 31, 2012 by complying with the following directives:

- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide proof to the District of payment for the 2010-11 audit.
- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide proof to the District of overdue debt (except PERS).
- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide a 90 day "aged listing" to reflect any outstanding debt.
- **On or before July 31, 2012**: Develop and implement a fiscally responsible plan to pay the current PERS debt in full. This plan must provide for future fiscal sustainability for HFC. It must include provision for timely provision of all future salary and benefit obligations. The plan must be approved by the Bethel School District. Approval *may* require increased and ongoing oversight of HFC financial practices, including the formation of a joint Board sub-committee to regularly review HFC practices.
- **On or before July 31, 2012**: Provide an accurate report of the total amount of PERS contributions owed to PERS on behalf of each HFC employee, broken down by employer contribution and employee contribution. Copies of these reports should be submitted to Bethel School District by the same date. The reports are to include an accounting of any lost interest for each employee, as well as a provision (approved by the District) to repay any interest lost by individual employees.
- **On or before August 31, 2012**: Provide evidence to individual employees that all outstanding PERS payments are paid in full.
- **Upon Receipt**: Immediately provide a copy of all June, July and August PERS statements to the District.
- All future payrolls are to be completed in the same month employees are paid; the District suggests a 25th of the month payroll. By having a 25th of the month payroll, payroll expenses, including payroll taxes and PERS will all be reflected in the month they are earned and payable. The final June 2012 payroll should be completed on June 28th, so that all associated costs can be paid on June 29, 2012. This maintains the 2011-12 year expenses in the correct fiscal year.

To date, HFC has complied with four directives:

- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide proof to the District of payment for the 2010-11 audit.
- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide proof to the District of overdue debt (except PERS).
- **On or before July 16, 2012** and prior to HFC's request for July SSF revenue: Provide a 90 day "aged listing" to reflect any outstanding debt. (This document was received 3 days after the due date, however accurate verbal expression of the document's content was provided prior to the due date.)
- All future payrolls are to be completed in the same month employees are paid; the District suggests a 25th of the month payroll. By having a 25th of the month payroll, payroll expenses, including payroll taxes and PERS will all be reflected in the month they are earned and payable. The final June 2012 payroll should be completed on June 28th, so that all associated costs can be paid on June 29, 2012. This maintains the 2011-12 year expenses in the correct fiscal year.

The remaining three directives are now under consideration:

- **On or before July 31, 2012**: Develop and implement a fiscally responsible plan to pay the current PERS debt in full. This plan must provide for future fiscal sustainability for HFC. It must include provision for timely provision of all future salary and benefit obligations. The plan must be approved by the Bethel School District. Approval *may* require increased and ongoing oversight of HFC financial practices, including the formation of a joint Board sub-committee to regularly review HFC practices.
- **On or before July 31, 2012**: Provide an accurate report of the total amount of PERS contributions owed to PERS on behalf of each HFC employee, broken down by employer contribution and employee contribution. Copies of these reports should be submitted to Bethel School District by the same date. The reports are to include an accounting of any lost interest for each employee, as well as a provision (approved by the District) to repay any interest lost by individual employees.
- **On or before August 31, 2012**: Provide evidence to individual employees that all outstanding PERS payments are paid in full.

This communication will focus on the directive below, we are working on the employee notifications in separate communication:

- **On or before July 31, 2012**: Develop and implement a fiscally responsible plan to pay the current PERS debt in full. This plan must provide for future fiscal sustainability for HFC. It must include provision for timely provision of all future salary and benefit obligations. The plan must be approved by the Bethel School District. Approval *may* require increased and ongoing oversight of HFC financial practices, including the formation of a joint Board sub-committee to regularly review HFC practices.

At our Board meeting held July 23, 2012, the Bethel Board of Directors developed criteria for me to use to determine approval of HFC's PERS Payback and Fiscal Sustainability Plan by Bethel School District. Approval of the plan is required, as per the directive. This meeting came about at the request of the Bethel Board out of concern for the financial viability of HFC and its impact on the District as a whole.

Based on these criteria I **cannot** approve the HFC Board-approved plan for HFC's PERS Payback and Fiscal Sustainability.

There are two *key* criteria that have not been met: 1) The plan (as detailed by the planned budget sheets) does not show a sustainable, responsible, and financially stable budget that ends the fiscal year with a positive ending fund balance; and 2) The plan (as detailed by the narrative statement) does not verify that all loan(s) will be paid-off within the 2012-13 fiscal year. I have noted other areas where the plan lacks clarity as well as other concerns.

Below you will see these issues detailed by criteria:

- **The planned budget sheets must show a beginning fund balance carried over from 2011-12. This beginning fund balance must include the PERS debt and any additional balance, positive or negative. This beginning fund balance must match documentation of 2011-12 ending fund balance.**
    - The HFC-approved plan shows a 2011-12 negative Ending Fund Balance (EFB) of ($153,603). This is consistent across all documents in this latest plan, but it is different than three versions of approximately ($67,000); ($89,000); and ($144,000) that we have received during the month of July. There is not a complete explanation of how HFC arrived at the new EFB. An explanation of the variance in reporting of the 2011-12 EFB would be required for me to fully understand and have confidence in the current reported 2011-12 EFB. There also appears to be a discrepancy in the "Starting Fund Balance (audited)" line item on the HFC 2011-2012 Financial Statement, which says ($64,638), and the "Fund Balance, End of Year" as stated on page 9 of the HFC audit, which says ($106,881). An explanation of the make-up of the "Starting Fund Balance (audited)" is needed.
- **The planned budget sheets should clearly articulate HFC's debt service.**
    - The planned budget sheets do articulate debt service. However, debt service accounting does not match the plan put forth in the narrative description:
        - At 184 ADMw, the narrative plan calls for a $25,000 loan in August of 2012 with payments August-December1, 2012. However, the planned budget sheets show a $35,000 loan in July of 2012 with payments August-December1, 2012.
        - At 184 ADMw, the narrative plan also calls for a $50,000 loan in May of 2013 with payment on August 1, 2013. However, the planned budget sheets show a $50,000 loan in May of 2013 with payment on June 1, 2013.
        - At 210 ADMw, the narrative plan calls for a $5,000 loan in August of 2012 with payment on September 1, 2012. However, the planned budget sheets show a $35,000 loan in July of 2012 with payments August-December1, 2012.
        - There are no planned budget sheets for an ADMw above 175 and below 184.
        - These discrepancies between the narrative statement and the planned budget sheets make the overall plan unclear. The District would not know which plan it is approving.
- **The planned budget sheets must show a sustainable and responsible budget that, outside of unanticipated expenditures, ends the fiscal year with a positive ending fund balance.**
    - The 184 ADMw Planned budget sheets show a negative EFB of ($46,725) for 2012-13 and ($1,396) for 2013-14.They also do <u>not</u> match the plan in the narrative. The narrative shows a May 15, 2013 loan of $50,000 and a payback in the next fiscal year on Aug. 1, 2013. The 184 ADMw Planned budget sheets show the loan revenue in May 2013 and loan payment in June 2013 (same fiscal year) leading to the negative EFB.
- **The Plan must include detailed information about any loan(s), including:**
- **Verification that the necessary loan(s) have been secured;**
    - Complied

- **Verification of the amount of the loan(s);**
    - Complied
- **Name of the individual or organization providing the loan(s);**
    - Complied. However, this may require further review. The loan is from a private party, an individual. Robert Praus is Executive Director Paula Praus-Williamson's brother. It is stated that there is no financial gain for the executive director from this plan, however her brother does gain interest income and that *may* be an ethics violation for the executive director. It is clear that the executive director's brother does make some profit from this loan. However, the executive director may not have been the decision-maker in this process and the interest rate is reasonable. I have referred this question to ODE for a legal opinion on whether such action would constitute an ethics violation.
- **Provide information on the terms of the loans including all associated costs, interest rates, payback schedule (including any balloon payments), and any co-signers;**
    - Complied. There does not appear to be any collateral offered. It appears that the lender could lay claim to HFC assets, if any, should HFC default on the loan. It is unclear how this debt would be resolved should HFC close and the District be required to reclaim flow-through SSF dollars.
- **Reflection of payments shown as expenditures in the planned budget sheets; and**
    - Complied. However, as stated previously, the plan in the narrative does not match the plan in the planned budget sheets.
- **Verification that any loan(s) will be paid-off within the 2012-13 fiscal year.**
    - Unclear. The narrative says the loan is paid off in two separate fiscal years, the planned budget sheets show it paid in the 2012-13 fiscal year.
- **Written agreements acknowledging promised monetary gifts to be received in the 2012-13 fiscal year may be represented as revenue in the planned budget sheets as long as a copy of the written agreement is included with the plan. All other fundraising, resource development, or donation plans should be described in the narrative but should not be included in the planned budget.**
    - Complied. $7,000 in donations in the month of July is included as revenue in the plan. It is stated that these have been received; however there is no proof of the donations provided.
- **The narrative should include staffing details for the Reduced Enrollment scenario.**
    - Complied.
- **The narrative should speak to the school's ability to operate as planned and as required by the contract and any applicable state laws.**
    - Complied. This final plan does not appear to impact teaching staff levels.
- **The narrative should note that the District will be provided with monthly financial statements as required by the contract, as well as monthly verification of PERS payment throughout the 2012-13 fiscal year. The narrative should also note HFC's willingness to provide additional information on expenditures and variations from the planned budget throughout the year. The type of documentation and review are to be determined by a Bethel and HFC Joint Board Sub-Committee.**
    - Complied.
- **The Plan must reflect HFC's sustainable operation and ability to payback PERS at current enrollment of 184 ADMw, anticipated increased enrollment of 210 ADMw, and a decrease to previous enrollment levels of 150 ADMw. If anyone of these enrolment scenarios is not feasible, the Plan may reflect that fact and present a scenario for HFC-initiated termination of the charter under section 8-I-iii of the contract.**
    - Complied. The District has noted that HFC plans to close the school should they fall below 175 ADMw.

This failure to fully comply with this directive from the June 29, 2012 memorandum requires the District to move forward with termination of its charter agreement with HFC. The following are grounds for revocation of the HFC charter and termination of the HFC contract with Bethel School District based on the following Oregon Revised Statute:

> **ORS 338.105 (1)** During the term of a charter, the sponsor may terminate the charter on any of the following grounds: **(a)** Failure to meet the terms of an approved charter or this chapter. **(c)** Failure to correct a violation of a federal or state law that is described in ORS 338.115 (**338.115. (1)** Statutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools: **(u)** Any statute or rule that is listed in the charter – *for purposes of this notice I am referring to ORS 338.135 (5), see below*) . And, **(e)** Failure to maintain financial stability.
>
> **ORS 338.135 (5)**… a public charter school shall be considered a public employer and as such shall participate in the Public Employees Retirement System.

As well as the following provisions of the charter school contract between Bethel School District and HFC:

> **Contract 6.C.(iii)** HFC shall maintain accounts that are in good standing when audited such that the audit report reveals no major findings. If HFC does not maintain accounts that are in good standing when audited such that the audit report reveals no major findings, then the District may take action to terminate this Contract under Section 8, paragraph I of this Contract.
>
> **Contract 6.C.(xii)** At all times HFC shall maintain appropriate governance and managerial procedures and financial controls. If HFC does not maintain appropriate governance and managerial procedures and financial controls, then the District may take action to terminate this Contract under Section 8, paragraph I of this Contract.
>
> **Contract 8.I.(i)** To the extent allowed by ORS Chapter 338 the District may revoke the charter and terminate this Contract on any of the following grounds: **a.** Violation of or failure to meet and sustain any terms of this Contract or ORS Chapter 338. **c.** Failure to correct any violation of a federal or state law that is described in ORS 338.115. And, **e.** Failure to maintain financial stability and to meet generally accepted standards of fiscal management as described in Sections 2 and 6 of this contract.

The Bethel Board has directed me not to allow extensions on deadlines stated in the June 29, 2012 memorandum. Therefore the District is moving forward with the termination process. The date of termination is continues to be set for August 31, 2012. As per the contract and ORS 338.105(2), HFC may request a hearing by the Bethel Board of Directors. If HFC requests a hearing my decision to reject this plan or other matters related to the June 29, 2012 memorandum and 60-day termination notice may be appealed by HFC. Please let me know by August 14, 2012 if you would like the Bethel School Board to hold a hearing on the termination of the charter agreement with HFC.

The Oregon Revised Statute on charter termination, including the appeal process is outlined below:
338.105 Termination of charter; appeal; rules; dissolution or closure of school. (1) During the term of a charter, the sponsor may terminate the charter on any of the following grounds:

(a) Failure to meet the terms of an approved charter or this chapter.

(b) Failure to meet the requirements for student performance stated in the charter.

(c) Failure to correct a violation of a federal or state law that is described in ORS 338.115.

(d) Failure to maintain insurance as described in the charter.

(e) Failure to maintain financial stability.

(f) Failure to maintain, for two or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under ORS 338.065.

(2) If a charter is terminated under subsection (1) of this section, the sponsor shall notify the public charter school governing body at least 60 days prior to the proposed effective date of the termination. The notice shall state the grounds for the termination. The public charter school governing body may request a hearing by the sponsor.

(3) A public charter school governing body may appeal a decision of a sponsor to:

(a) The state board if the sponsor is an entity described in ORS 338.005 (5)(a) or (c). The board shall adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' education.

(b) The circuit court pursuant to ORS 183.484 if the sponsor is the State Board of Education.

(4)(a) Notwithstanding subsection (2) of this section, a sponsor may terminate a charter immediately and close a public charter school if the public charter school is endangering the health or safety of the students enrolled in the public charter school.

(b) The public charter school governing body may request a hearing from the sponsor on the termination of the charter under this subsection. The sponsor shall hold a hearing within 10 days after receiving the request.

(c) The public charter school governing body may appeal a decision of a sponsor under this subsection to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.

(d) Throughout the appeals process, the public charter school shall remain closed at the discretion of the sponsor unless the State Board of Education orders the sponsor to open the public charter school and not terminate the charter.

(5) Termination of a charter shall not abridge the public charter school's legal authority to operate as a private or nonchartered public school.

(6) If a charter is terminated or a public charter school is dissolved:

(a) The assets of the public charter school that were purchased with public funds shall be given to the State Board of Education. The State Board of Education may disburse the assets of the public charter school to school districts or other public charter schools.

(b) All student education records of the public charter school shall be transferred to the administrative office of the school district in which the public charter school was located.

(7) A public charter school governing body may only terminate a charter, dissolve or close a public charter school at the end of a semester. If a charter is terminated by the public charter school governing body or a public charter school is closed or dissolved, the public charter school governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the termination, closure or dissolution.

The contract between HFC and the District also has provisions for appeal and they are outlined below:

8. I. Termination

(i) To the extent allowed by ORS Chapter 338 the District may revoke the charter and terminate this Contract on any of the following grounds:

a. Violation of or failure to meet and sustain any terms of this Contract or ORS Chapter 338.

b. Failure to meet the requirements for student performance stated in this Contract.

c. Failure to correct any violation of a federal or state law that is described in ORS 338.115.

d. Failure to maintain insurance as described in Section 10 of this Contract.

e. Failure to maintain financial stability and to meet generally accepted standards of fiscal management as described in Sections 2 and 6 of this contract.

(ii) The District shall provide sixty (60) days prior written notice of its intent to terminate the charter agreement and the grounds for termination, pursuant to ORS 338.105 (2). HFC may appeal the District's decision to terminate the charter agreement directly to the District's Board. The District Board shall hold the hearing within ten (10) days after receiving a request. HFC may respond to the allegations in the District's written notification by offering documentary evidence and oral argument. The District bears the burden of proving the allegations in the written notification by a preponderance of the evidence. HFC has the burden of proof for any affirmative defense to the allegations by a preponderance of the evidence. The District Board's decision may only be appealed to the state Board of Education according to ORS 338.105. Until the effective date of termination of this Contract, as determined by the District, the District shall continue to make the funding payments described under Section 6 of this Contract to HFC.

(iii) HFC shall only terminate this charter at the end of a semester. HFC shall notify the District in writing at least 180 days prior to the proposed effective date of termination, dissolution or closure of HFC.

(iv) In the event of termination of HFC as a public charter school, all assets purchased with public funds given to HFC by the District in accordance with this Contract shall be given to the state Board of Education in accordance with ORS 338.105(6). HFC shall prepare a list of assets that HFC currently holds as a public charter school. That list is hereby incorporated into this agreement as Exhibit C. HFC is entitled to any assets that appear on Exhibit D that were purchased with non-public funds, or were purchased with public funds if less than $100.00 of public funds were expended on the asset, at the time HFC ceases to operate as a public charter school, and to any other asset that HFC has acquired through the expenditure of non-public funds as described in Section 8, paragraph K of this Contract.

Scott, I am delivering this message with a heavy heart. I regret that HFC was not able to meet the criteria for this directive. The Bethel School District has maintained a long and positive relationship with the HomeSource organization. This has been to the benefit of hundreds of children in our community. It is my hope we can continue to find ways to partner with the homeschool community.

Sincerely,

Colt Gill
Superintendent

Copy:

- Paula Praus-Williamson, HFC Executive Director
- Bethel School Board Directors